

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Electronic Delivery of MVPD Communications)	MB Docket No. 17-317
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. (“Nexstar”), the licensee of 159 full-power and Class A television stations located in 100 separate designated market areas (“DMAs”), respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking¹ pursuant to which the FCC, among other things, seeks comment on how to modernize the must carry/retransmission carriage election communication method between broadcasters and cable operators/satellite carriers, which is now limited to written notices delivered by U.S. mail, certified, and in some instances, must include return receipt requested service.²

Nexstar supports the Commission’s ongoing efforts to modernize its rules and reduce the administrative burdens and costs borne by both the Commission and its regulates in complying with outdated rules – rules like the Election Rules which require the expensive and time consuming process of certified mail as the sole means for broadcasters to notify multichannel video programming providers (“MVPDs”) of their election of retransmission consent or must-carry for

¹ See *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 (rel. Dec. 14, 2017) (“NPRM”).

² 47 CFR §76.64(h); 47 CFR §76.66(d)(1)(ii) (the “Election Rules”).

each three year renewal cycle.³ Nexstar agrees with the Commission that eliminating this outdated delivery notice requirement will be beneficial for all stakeholders through conserving natural resources, decreasing costs and increasing efficiency.⁴ Nexstar also encourages the Commission to consider Nexstar's proposal to harmonize the cable and satellite election rules such that a "failure" to send an election notice properly results in a default election of retransmission consent, rather than must carry.⁵

I. INTRODUCTION.

Under the Election Rules, broadcasters are required to "send via certified mail to each cable system in the station's defined market a copy of the station's election statement with respect to that [cable] operator" and/or must make election requests "in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested."⁶ The cable version of this rule was implemented when the Internet was in its infancy rules and communications by email was "special" not ubiquitous; and, as the Commission acknowledges, was adopted to ensure broadcasters are "able to demonstrate that they submitted their elections by the required deadline."⁷ The satellite rule simply imported this reasoning and added in the return receipt obligation.

In compliance with these rules, and during the last carriage election cycle which concluded on October 1, 2017, Nexstar was required to confirm information for more than 4100 community

³ See e.g., *Minority Television Project, Inc.*, Memorandum Opinion and Order, DA 18-63 (rel. Jan. 23, 2018) (election letter sent by USPS priority mail is not a valid election letter) ("Minority MOO").

⁴ NPRM at 10758.

⁵ Comments of Nexstar Broadcasting, Inc., *Modernization of Media Regulation Initiative*, MB Docket No. 17-105, at 16-17 (filed July 5, 2017) ("Modernization Comments").

⁶ 47 CFR §76.64(h); 47 CFR §76.66(d)(1)(ii).

⁷ NPRM at 10767.

systems and 1500 counties, and notify more than 1,000 different cable operators that each Nexstar owned and operated station elected retransmission consent. Setting aside the massive quantity of time this process involved (and the associated personnel and research costs), Nexstar spent over \$38,000 on certified mail fees to send more than 6,500 certified letters to the MVPDs servicing its stations' communities. Nexstar estimates that its total expenses for employee time, database and research information, and mailing expenses is in excess of \$120,000.⁸ Therefore, it is no surprise that, at the onset of the Commission's modernization proceedings, Nexstar proposed that the Commission expand the triennial election methods to include "e-mail or other electronic means" as a distribution method and "amend the default election for cable to retransmission consent instead of must carry."⁹ Indeed, today there are numerous different methods the Commission could adopt that would still ensure MVPDs receive notice and broadcasters can prove that fact if necessary, and making such changes will reduce the burdens on broadcasters without negatively burdening MVPDs.

II. THE COMMISSION SHOULD AMEND THE ELECTION RULES TO PROVIDE FOR AN ALTERNATIVE ELECTRONIC DELIVERY METHOD TO INCREASE EFFICIENCY, REDUCE MATERIAL WASTE AND CONSERVE RESOURCES.

Broadcasters are required to provide written notice to MVPDs prior to the initiation of a new television service within a market, and on a regular triennial cycle. Under the current Election Rules meeting this requirement involves tremendous time and resources from broadcasters, while simultaneously failing in its purported mission to guarantee that MVPDs actually timely receive the required notice. To provide this notice, broadcasters undertake tasks that include, but are not

⁸ Because the FCC's COALS database is not up-to-date (with systems no longer in business, incorrect addresses, and similar issues) and does not have an efficient mechanism to determine which cable systems are in any given DMA, Nexstar engages additional personnel to manage through this six-month process.

⁹ Modernization Comments at 16-17.

limited to, confirming each state, county and cable system within the Commission's Cable Operations and Licensing System ("COALS") database (or through some other third-party mechanism); verifying MVPD addresses; drafting and producing each notification letter; stuffing envelopes; manually affixing both the certified mail and return receipt documentation to envelope; logging the two tracking numbers; and obtaining the appropriate postage for each letter.¹⁰ In 2017, certified mail service cost was approximately \$3.35 per letter, and if return receipt service was included the cost increased to \$5.46.¹¹ Moreover, the process is only complete after 1) scanning each notice and uploading it into the station's public inspection file and 2) manually confirming that each letter has been received and signed for by the intended recipient.

In addition, because the U.S. Postal Service is a third-party service provider, broadcasters are limited to crossing their fingers and hoping that all sent notices actually arrive at their intended destination without incident on or before the October 1 deadline. Confirmation of delivery is in no way instantaneous. In most cases, the sender is forced to wait several weeks to receive confirmation that the letter was, in fact, received, returned or lost. Further, in the event the letters are misdirected, rejected or returned, the broadcaster may not receive notice of that fact until long after the October 1 deadline.¹²

¹⁰ At least one postage machine company has a software platform that automates some portion of the actual mailing process, but the equipment and associated software license are themselves in excess of \$30,000 and the broadcaster does not receive physical confirmation of delivery (rather the broadcaster must separately print such confirmations itself).

¹¹ The USPS rates stipulated were from 2017. In 2018, certified mail service increased to \$4.72 and with return receipt service increased to \$6.70. See: <https://www.certifiedmaillabels.com/usps-postal-rates> (last visited on Feb. 4, 2018).

¹² During the 2017 notice process, Nexstar had multiple letters which it sent to the correct address "rejected" by the MVPD (e.g., the MVPD refused to sign for receipt) and multiple letters sent to the correct address returned as "unable to deliver." Nexstar also had the post office inform it (in response to an inquiry) that none of its letters to one major MVPD were reflecting as delivered. When Nexstar followed up with that MVPD's mail room directly the MVPD let Nexstar know that, in fact, it had a few hundred letters from Nexstar, although it could not confirm it had every letter Nexstar sent.

The foundation underlying the Commission’s proposal to permit broadcasters to use alternative means to inform MVPDs of their election choices is the same as the foundation underlying the Commission’s proposal to provide MVPDs with alternative means to notify their subscribers of MVPD-related changes – that is, the “positive environmental aspects of saving substantial amounts of paper annually, increased efficiency, and enabling [MVPDs] to more readily access accurate information” and “greatly eas[ing] the burden of complying with these notification requirements” for broadcasters.¹³ Indeed, electronic delivery or email delivery would provide broadcasters with the same reduced expenses and increased efficiency as sought by the MVPDs with respect to their required subscriber notices. Advantages that the Commission recently acknowledged and provided to the MVPDs in the context of communicating with their subscribers as required under 47 C.F.R. 76.1602 and 47 C.F.R. 76.1603.¹⁴ These mandatory communications between MVPDs and consumers are equivalent to the requisite communications between MVPDs and broadcasters. In both instances, these communications are required on a regular cycle or triggered by certain events, such as new services.¹⁵

Several MVPDs agree that electronic delivery of certain requisite notices to their subscribers is sufficient to comply with the Commission’s rules, and even beneficial to their subscribers.¹⁶ Broadcasters seek the same opportunity with respect to their carriage election

¹³ NPRM at 10758.

¹⁴ See National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling, Declaratory Ruling, 32 FCC Rcd 5269 (2017) (2017 Declaratory Ruling); *See also* Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative, 83 FR 2119 (Jan. 16, 2018)(“the ruling clarified that the “written information” that cable operators provide to their subscribers annually pursuant to § 76.1602(b) of the Commission’s rules may be provided via email to a verified email address if there is a mechanism for customers to opt out of email delivery and continue to receive paper notices.”).

¹⁵ *See* 47 C.F.R. § 76.1602, 47 C.F.R. § 76.1603, 47 CFR § 76.64(h) and 47 CFR § 76.66(d).

¹⁶ 2017 Declaratory Ruling, 32 FCC Rcd 5269, 5271 (2017).

obligations. The requisite election notices can be created and distributed electronically to MVPDs in a fraction of the time the current certified mail process requires. In addition, electronic delivery would significantly reduce the need to waste material resources or expend funds to pay for postage and premium delivery services. Moreover, electronic delivery has the capability to provide almost instantaneous delivery confirmation, and in some instances, read receipts, a secondary confirmation of a successful delivery of the notices.¹⁷ MVPD recipients also would be able to easily search and/or store the electronically delivered notices. In addition, email notices are easily convertible to pdf files for easy uploading to the broadcast station's online public inspection file; and assuming the letters have been timely posted to the online file (e.g., before October 1) this would serve as an additional method to confirm that the MVPDs received notice in advance of the required notification deadline.

Conversely, AT&T's proposal for the use of an alternate express delivery service does not alleviate much of the administrative or financial costs associated with the current notification process. Under AT&T's proposition, broadcasters are still required to undertake the upfront research, consume the physical materials, expend the funds for postage and rely on a third-party delivery system. The burden associated with the confirmation of delivery remains unchanged as well.

Further, some of AT&T's peers may disagree on the use of an alternate express delivery service. The Commission recently denied a must carry complaint filed by KMTP-TV, a non-commercial television station located within the San Francisco DMA. The Commission stated that even though the carrier, DISH Network L.L.C. ("DISH"), received KMTP-TV's must carry election before the October 1, 2017 deadline, the broadcaster failed to fully comply with

¹⁷ Sent electronic mail also reflects the date and time an electronic message was sent by the sender.

broadcaster/carrier notice requirements of 47 C.F.R. 76.66 since it elected to use Priority Express Mail instead of Certified Mail, Return Receipt Requested and DISH was correct in rejecting the must carry election.¹⁸ The Commission stated the basis for the use of certified mail, return receipt, was necessary to ensure that “satellite carriers were aware of their carriage obligations” and confirmation that an “election was mailed or received.”¹⁹ Given the technological advances and the pervasive use of the internet and email communications, and the changes in the way business is generally conducted, including the notice, acknowledgement and confirmation process between most parties, e-mail distribution is not a big ask or an unreliable delivery method.

In addition, AT&T appealed to the Commission to update the carrier/customer process indicating that it “agrees with NCTA that these statutory provisions are broad enough to permit cable operators and DBS carriers to provide the required notices electronically.”²⁰ Therefore, Nexstar is unclear why AT&T supports email delivery for carrier notices but proposes a process that would subject broadcasters to an outdated, labor intensive, physical delivery notice requirement – especially when AT&T’s affiliate, DirecTV, will get the same single notice letter by email that it currently receives by certified mail. From an administrative perspective, the receipt of one email notice cannot be construed as less effective or more burdensome than the receipt of one written letter. Accordingly, any and all benefits extended to the MVPD or carrier notification process, which are consistent with Commission policy and meant to reduce the compliance

¹⁸ Minority MOO at ¶ 3 (“In the instant case, the record indicates that KMTP sent DISH a timely letter “dated September 27, 2017, electing mandatory carriage for the election cycle that commences on January 1, 2018, and ends on December 31, 2020.” KMTP’s letter included all of the information that is required by Section 76.66(d)(1) of the Commission’s rules.”).

¹⁹ Minority MOO at ¶. 5.

²⁰ See e.g., *Petition for Declaratory Ruling of National Cable & Telecommunications Association and American Cable Association*, MB Docket No. 16-126 (filed Mar. 7, 2016); Reply Comments of AT&T, at 5-6 (AT&T Reply) *Modernization of Media Regulation Initiative*, MB Docket No. 17-105 (filed Aug. 4, 2017).

burdens and improve efficiencies, should be equally available to the broadcaster/MVPD notification process as well.

The adoption of electronic delivery for broadcaster MVPD election notices will reduce unnecessary expenditures associated with the administration of the process and the actual costs of completing the broadcaster notice exercise. Therefore, Nexstar urges the Commission to amend its rules to reduce the administrative and financial burdens and unnecessary waste associated with the broadcasters' mandatory use of an antiquated delivery method, to embrace the advantages of electronic delivery for the Election Rules and ensure that all Commission regulatees are on equal ground.

Nexstar also urges the Commission to reclassify the default election for cable to retransmission consent instead of must carry. Over the past two plus decades, the election of retransmission consent has become the ordinary course of business in the broadcast industry. Revenue obtained from retransmission consent rates helps to offset network fees and the increasing competition from other media outlets. Consequently, few commercial broadcasters are likely to actively elect must carry rights in the current market. A change in the default election would significantly reduce the number of election notices distributed to the carriers, thus reducing the administrative burdens and costs associated with broadcasters distributing them and carriers cataloging the notices. In addition, changing the default election for cable operators to retransmission consent would harmonize the election obligations across all MVPD platforms.

III. CONCLUSION.

The Commission must continue its momentum to eliminate outdated rules and policies which unnecessarily consume resources or impede progress in a way that disserves the public interest. Modifying the Election Rules as proposed herein will vastly reduce the financial and time burdens these rules currently impose on television broadcasters without imposing financial and

time burdens on MVPDs. Accordingly, the Commission should amend its carriage election rules to include the electronic delivery alternative and/or to revise the cable carriage election default to reflect retransmission consent.

Respectfully submitted,

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